

File No- BMSIC/40010/75-2019/1448

Date: - 01.06.22

Order

M/s **VADSP Pharmaceuticals**, situated at Plot No- 124, EPIP Ind. Area Phase-I, Jharmajri, Baddi, Dist-Solan, Himachal Pradesh was declared as L1 bidder for following drug vide tender reference no.- BMSIC/DRUGS/19-05:-

1. Meropenem Injection 500mg Vial (with unit price of Rs. 52.00/-).

Accordingly, the firm M/s VADSP Pharmaceuticals was issued a Letter of Intent (LoI) vide letter no. - BMSIC/40010/75-2019/5696, dated 20-12-2019 for submitting the requisite documents, security deposit and to execute the Rate-Contract for the said drug.

Subsequently, the firm M/s VADSP Pharmaceuticals was issued Purchase Orders for 50000 units, 100000 units & 50000 units of Meropenem Injection 500mg vide letter no. - BMSIC/40010/75-2019/6865 dated 07-02-2020, 2336 dated 06-06-2020 and 4539 dated 16-09-2021 respectively.

The firm, M/s VADSP Pharmaceuticals did not supply the ordered quantity against the Purchase Order no- 4539 dated 16-09-2021, which adversely affected the objectives of BMSICL, i.e. Free Drug supply to every patients at all Government health facilities in the State of Bihar, thus violating Tender Clause No- 19 (e), which reads as, ***"It is the duty of the supplier to supply Drugs/Medicines at the destinations mentioned in the Purchase Order and supply shall confirm to the conditions mentioned in the provisions of NIT, rate contract and directives of BMSICL."***

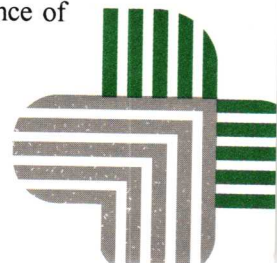
In view of the above facts, M/s VADSP Pharmaceuticals was issued a show cause notice vide letter no. - BMSIC/40010/75-2019/5508, dated 26-10-2021, and also informed that because of this activity of Non-supply of the ordered drug, BMSICL is forced to initiate strong action against your firm in accordance with the terms and conditions laid under the SBD pertaining to the Tender No- BMSIC/DRUGS/19-05.

The firm in its reply dated 31-10-2021 had stated that, ***"there is an acute shortage in the market of Active Pharmaceuticals Ingredients (API) which is supplied by China. Without the said raw materials, it is currently impossible for us to manufacture and supply the order of 50000 units of Meropenem Injections."***

Again the firm, M/s VADSP Pharmaceuticals was issued showcause notice vide mail date 14-03-2022 directing to reply within seven days failing which it shall be presumed that the firm has nothing to say and accordingly appropriate action shall be taken against said firm unilaterally as per provisions of law and the terms and conditions in the tender clause. The firm, M/s VADSP Pharmaceuticals in its reply vide mail dated 21-03-2022 stated their inability to perform the contractual obligations due to the unforeseen and unfortunate change in circumstances made due to shortage of raw material required for the performance of the same.

According to Force Majeure Clause (FMC), ***"A Force Majeure (FM) means extraordinary events or circumstance beyond human control such as an event described as an act of God (like a natural calamity) or events such as a war, strike, riots, crimes (but not including negligence or wrong-doing, predictable/ seasonal rain and any other events specifically excluded in the clause). An FM clause in the contract frees both parties from contractual liability or obligation when prevented by such events from fulfilling their obligations under the contract. An FM clause does not excuse a party's non-performance entirely, but only suspends it for the duration of the FM. The firm has to give notice of FM as soon as it occurs and it cannot be claimed ex-post facto. There may be a FM situation affecting the purchase organization only. In such a situation, the purchase or organization is to communicate with the supplier along similar lines as above for further necessary action. If the performance in whole or in part or any obligation under this contract is prevented or delayed by any reason of FM for a period exceeding 90 (Ninety) days, either party may at its option terminate the contract without any financial repercussion on either side."***

As per Tender Clause 21 (2), the schedule of supply of drugs is of 60days after the issuance of purchase Order, where the firm has not started the supply yet and hence has exceeded 90 days.



Hence, in view of the provisions contained in the contract relating to Force Majeure Clause where the performance in whole or in part or any obligation under the said contract was prevented or delayed by any reason of Force Majeure for a period exceeding 90 days, the rate Contract of Meropenem Injection 500 mg with M/s VADSP Pharmaceuticals is hereby terminated with immediate effect apart from forfeiture of security deposit. The non-executed purchase orders issued earlier also stand cancelled.

Memo No. - BMSIC/40010/75-2019/ 1448

Copy to:

The Managing Director, VADSP Pharmaceuticals for information and needful action.
The General Manager (Logistics) & (Finance), BMSICL for information and necessary action.


(Managing Director)

Date-01/05/2022

Memo No.- BMSIC/40010/75-2019/ 1448

Copy to:

The Additional Chief Secretary, Department of Health, Govt. of Bihar for his kind information please.


(Managing Director)

Date-01/05/2022


(Managing Director)

